

REMARKS

Claims 1, 3 and 7 are pending in this application. No amendment is made in this response. It is believed that this Response is fully responsive to the Office Action dated **February 9, 2005**.

Claims 1, 3 and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by Yokoyama et al. in light of the results indicted by the Declaration, dated February 22, 2002, that indicated that the polypeptide content of peptide having a molecular weight of at least 5000 is 21 %, which is outside the claimed range. (Office action paragraph no. 3)

The rejection of claims 1, 3 and 7 is respectfully traversed, and reconsideration of the rejection is requested.

In stating the rejection, The Examiner refers to the Declaration under 37 CFR 1.132 filed on **February 22, 2002**, as indicating that the polypeptide content of peptide having a molecular weight of at least 5000 is 21%, outside of the claimed range.

However, Applicant's arguments on page 5, bottom paragraph, of the Amendment filed on December 1, 2004, referred to the Declaration of **December 22, 2003**, stating that, in Yokoyama et al., the content of polypeptides having molecular weight of at least 5000 is **21 %**. (This finding is in Table 1 of the Declaration of December 22, 2003). Applicant had referred to the Declaration of February 22, 2002, on page 4 of the Amendment, but this was in relevance to **JP '979 (Yoshikawa), not to Yokoyama et al.** Applicant submits that the Declaration dated December 22, 2003, is more relevant to Yokoyama than the Declaration dated February 22, 2002.

Applicant therefore respectfully requests that the arguments presented on December 1, 2004, be considered in light of the Declaration of December 22, 2003.

Moreover, Applicant respectfully disagrees with the Examiner's comments in regard to the Declaration dated February 22, 2002. Applicant's arguments are that Yokoyama's supernatant, with a content of 21%, is **outside** the claimed range. The Examiner appears to acknowledge this, yet appears to take this as indication of anticipation by the reference. However, if the value for the reference is, indeed, outside the claimed range, there can be no anticipation of the claims by this reference.

Claims 1, 3 and 7 remain rejected under 35 U.S.C. §102(b) as being anticipated by Yasumoto (JP 06298794).

Reconsideration of the rejection is respectfully requested in view of the evidence in the attached Declaration under 37 CFR 1.132 by Hiroyuki Fujita, dated May 12, 2005.

The Examiner argues that Yasumoto starts with the same starting material, dried bonito, and digests it in the same manner as in the present invention. The Examiner therefore is presenting this as a basis in fact and/or technical reasoning for inherency of the present claim limitations.

Accordingly, the inventor, Hiroyuki Fujita, has investigated Yasumoto (JP-A-06298794) and has reproduced working example 1 of Yasumoto, presenting the results in the attached Declaration.

According to the attached Declaration, the peptide mixture solution of Yasumoto is found to contain more than 10% by weight of polypeptide having a molecular weight of at least 5,000 and to be inferior in aftertaste when evaluated according to the evaluation criteria of the present invention. Therefore, Claims 1, 3 and 7 are different from Yasumoto in view of the content of polypeptide having

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a molecular weight of at least 5,000.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

ARMSTRONG, KRATZ, QUINTOS,
HANSON & BROOKS, LLP



Daniel A. Geselowitz, Ph.D.

Agent for Applicant

Reg. No. 42,573

DAG/lrj

Atty. Docket No. 001200

Suite 1000

1725 K Street, N.W.

Washington, D.C. 20006

(202) 659-2930



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PATENT TRADEMARK OFFICE

Enclosure: Declaration under 37 CFR 1.132 by Hiroyuki Fujita, dated May 12, 2005

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